

## § 207.257

(b)(1) Except as provided in paragraph (b)(2), the Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given, unless the mortgagor agrees in writing that, during such period as the mortgage continues to be in default, and payments by the mortgagor to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagor or mortgagee, as may be appropriate in the particular situation, will hold in trust for disposition, as directed by the Commissioner, all rents or other funds derived from the secured property that are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges, under the mortgage.

(2) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), and section 242 (12 U.S.C. 1715z-7), the Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given unless the mortgagor agrees in writing that, during such period as payments to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagor will hold in trust for disposition as directed by the Commissioner all rents or other funds derived from the property which are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges, under the mortgage.

(3) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (b)(1) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (b)(1) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the

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regulations of paragraph (b)(2) shall apply.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

[76 FR 24370, May 2, 2011]

### § 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256(b), or otherwise being apprised of the violation of a covenant, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Commissioner.

[76 FR 24371, May 2, 2011]

### § 207.258 Insurance claim requirements.

#### (a) *Alternative election by mortgagee.*

(1) When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(a)(3) or (b)(3), the mortgagee must, within 45 calendar days after the date of eligibility, such period is referred to as the "Eligibility Notice Period" for purposes of this section, give the Commissioner notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section. Notice of this election must be provided to the Commissioner in the manner prescribed in 24 CFR part 200, subpart B. HUD may extend the Eligibility Notice Period at the request of the mortgagee under the following conditions:

(i) The request must be made to and approved by HUD prior to the 45th day after the date of eligibility; and

(ii) The approval of an extension shall in no way prejudice the mortgagee's right to file its notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner or to

acquire and convey title to the Commissioner within the 45-day period or any extension prescribed by the Commissioner.

(2) For mortgages funded with the proceeds of state or local bonds, Ginnie Mae mortgage-backed securities, participation certificates, or other bond obligations specified by the Commissioner (such as an agreement under which the insured mortgagee has obtained the mortgage funds from third-party investors and has agreed in writing to repay such investors at a stated interest rate and in accordance with a fixed repayment schedule), any of which contains a lock-out or prepayment premium, in the event of a default during the term of the prepayment lock-out or prepayment premium, and for any mortgage insured under section 232 of the Act, the mortgagee must:

(i) Request a 90-day extension of the deadline for filing the notice of the mortgagee's intention to file an insurance claim and the mortgagee's election to assign the mortgage or acquire and convey title in accordance with the mortgagee certificate, which HUD may further extend at the written request of the mortgagee;

(ii) Assist the mortgagor in arranging refinancing to cure the default and avert an insurance claim, if the Commissioner grants the requested (or a shorter) extension of notice filing deadline;

(iii) Report to the Commissioner at least monthly on any progress in arranging refinancing;

(iv) Cooperate with the Commissioner in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(v) Require successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out or prepayment premium; and

(vi) After commencement of amortization of the refinanced mortgage, notify HUD of a delinquency when a payment is not received by the 10th day after the date the payment is due.

(3) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regu-

lations of paragraph (a)(2) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (a)(2) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (a)(2) shall not apply.

(4) *Acknowledgment of election.* For mortgages insured pursuant to section 232 of the Act, if the lender provides notice to the Commissioner of its election either to assign the mortgage to the Commissioner or to acquire and convey title to the Commissioner, the Commissioner shall, not later than 90 calendar days after the expiration of the Eligibility Notice Period, as defined in paragraph (a)(1) of this section, as the same may have been extended, acknowledge and accept, or reject for cause, pursuant to program requirements, the lender's election, provided that the Commissioner may, in the Commissioner's discretion, extend such 90-day period by no more than an additional 90 calendar days if the Commissioner determines that such an extension is in HUD's interest.

(b) *Assignment of mortgage to Commissioner—* (1) *Timeframe; request for extension.* (i) If the mortgagee elects to assign the mortgage to the Commissioner, the mortgagee shall, at any time within 30 calendar days after the date HUD acknowledges the notice of election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, any applicable credit instrument and the realty and chattel security instruments.

(ii) The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under §207.258b is being considered. A mortgagee may consider failure to receive a notice of an extension approval by the end of the 30-day time period a denial of the request for an extension.

(iii) The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the

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Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the mortgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner.

(iv) The requirements of paragraphs (b)(2) through (b)(6) of this section shall also be met by the mortgagee.

(2) *Notice of assignment.* On the date the assignment of the mortgage is filed for record, the mortgagee must notify the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of such assignment, and must also notify the FHA Comptroller by telegram of such recordation.

(3) *Warranty of mortgagee.* The assignment shall be made without recourse or warranty, except that the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity and priority of the mortgage.

(ii) The mortgage is prior to all mechanics' and materialmen's liens filed on record subsequent to the recording of the mortgage, regardless of whether such liens attached prior to the recording date.

(iii) The mortgage is prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of the mortgage, except such liens or other matters as may be approved by the Commissioner.

(iv) The amount stated in the instrument of assignment is actually due under the mortgage and there are no offsets or counterclaims against such amount.

(v) The mortgagee has a good right to assign the mortgage.

(4) *Chattel lien warranty.* In assigning its security interest in chattels, including materials, located on the premises covered by the mortgage, or its security interest in building components stored either on-site or off-site at the time of the assignment, the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity or pri-

ority of the lien created by the chattel security instruments; and

(ii) The mortgagee has a good right to assign the security instruments; and

(iii) The chattel security instruments are a first lien on the items covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(5) *Items delivered by mortgagee.* The mortgagee shall deliver to the Commissioner, within 45 days after the assignment is filed for record, the items enumerated below:

(i) An assignment of all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction.

(ii) All policies of title or other insurance or surety bonds or other guarantees, and any and all claims thereunder, including evidence satisfactory to the Commissioner that the effective date of the original title coverage has been extended to include the assignment of the mortgage to the Commissioner.

(iii) All records, ledger cards, documents, books, papers, and accounts relating to the mortgage transaction.

(iv) All property of the mortgagor held by the mortgagee or to which it is entitled (other than the cash items which are to be retained by the mortgagee) pursuant to paragraph (b)(5) of this section.

(v) Any additional information or data which the Commissioner may require.

(6) *Disposition of cash items.* The following cash items shall either be retained by the mortgagee or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner at the time the insurance claim is filed:

(i) Any balance of the mortgage loan not advanced to the mortgagor.

(ii) Any cash held by the mortgagee or its agents or to which it is entitled, including deposits made for the account of the mortgagor, and which have not been applied in reduction of the principal of the mortgage indebtedness.

(iii) All funds held by the mortgagee for the account of the mortgagor received pursuant to any other agreement.

(iv) The amount of any undrawn balance under a letter of credit used in lieu of a cash deposit.

(c) *Conveyance of title to Commissioner.* If the mortgagee elects to acquire and convey title to the Commissioner, the following requirements shall be met:

(1) *Alternative actions by mortgagee.* At any time within a period of 30 days after the date of the notice of such election, the mortgagee shall take one of the alternative actions in paragraph (c) (2) or (3) of this section.

(2) *Foreclosure of mortgage.* The mortgagee may elect to commence foreclosure proceedings. If the laws of the State where the property is located do not permit institution of foreclosure within such 30-day period, foreclosure shall be commenced not less than 30 days after such action can be taken. Under such proceedings, the mortgagee shall take one of the following actions:

(i) Obtain possession of the mortgaged property and the income therefrom through the voluntary surrender thereof by the mortgagor.

(ii) Institute and prosecute with reasonable diligence, proceedings for the appointment of a receiver to manage the mortgaged property and collect income therefrom.

(iii) Proceed to exercise such other rights and remedies as may be available to it for the protection and preservation of the mortgaged property and to obtain the income therefrom under the mortgage and the law of the particular jurisdiction.

(iv) With the prior approval of the Commissioner, exercise the power of sale under a deed of trust.

(3) *Acquisition of title and possession.* The mortgagee, with the approval of the Commissioner, may elect to acquire possession of, and title to, the mortgaged property by means other than foreclosure. With the prior approval of the Commissioner, title may be transferred directly to the Commissioner.

(4) *Notice of foreclosure.* The mortgagee shall give written notice to the Commissioner within 30 days after the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion. Any developments which might delay the consummation of such

proceedings shall be promptly reported to the Commissioner.

(5) *Transfer by mortgagee.* After acquiring title to and possession of the property, the mortgagee shall (within 30 days of such acquisition) transfer title and possession of the property to the Commissioner. The transfer shall be made in such manner as the Commissioner may require. On the date the deed is filed for record, the mortgagee shall notify the Commissioner on a form prescribed by him of the filing of such conveyance, and shall also notify the FHA Assistant Commissioner-Comptroller by telegram of such recordation.

(6) *Filing of deed and application.* The mortgagee shall file its application for insurance benefits at the time of filing for record of the deed conveying the property to the Commissioner.

(7) *Deed covenants and documents.* The deed conveying the property to the Commissioner shall contain covenants satisfactory to the Commissioner. The original deed shall be forwarded to the Commissioner as soon as received from the recording authority. The following documents shall be forwarded with the deed:

(i) A bill of sale covering any personal property to which the mortgagee is entitled by reason of the mortgage transaction or by the acceptance of a deed in lieu of foreclosure.

(ii) An assignment of all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction and out of the foreclosure proceedings or other means by which the property was acquired.

(iii) An assignment of any claims on account of title insurance and fire or other hazard insurance, except claims which have been released with the prior approval of the Commissioner.

(8) *Title evidence.* Evidence of title, satisfactory to the Commissioner and meeting the requirements of §207.258a shall be furnished to the Commissioner (without expense to him) within 45 days of the filing for record of the deed conveying the property to him.

(9) *Disposition of cash items.* The provisions of paragraph (b)(4) of this section, relating to the retention or delivery of cash items, shall be applicable to cases

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involving the conveyance of property to the Commissioner.

(Information collection requirements in paragraph (b) were approved by the Office of Management and Budget under control number 2535-0061)

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### § 207.258a Title requirements.

(a) *Form of title evidence.* The title evidence submitted with a conveyance of the property to the Commissioner shall be in the form of an owner's policy of title insurance, except that, if an abstract and attorney's opinion were accepted by the Commissioner at the time of insurance, the title evidence may be in such form. The title evidence shall be effective on or after the date of the recording of the conveyance to the Commissioner.

(b) *Content of title evidence.* To be satisfactory to the Commissioner, the title evidence covering the property conveyed to him shall show the same title vested in the Commissioner as was vested in the mortgagor as of the date of the mortgage was filed for record, with the exception of such liens or other matters affecting the title as may be approved by the Commissioner.

### § 207.258b Partial payment of claim.

(a) Whenever the Commissioner receives notice under § 207.258 of a mortgagee's intention to file an insurance claim and to assign the mortgage to the Commissioner, the Commissioner may request the mortgagee, in lieu of assignment, to accept partial payment of the claim under the mortgage insurance contract and to recast the mortgage, under such terms and conditions as the Commissioner may determine.

(b) The Commissioner may request the mortgagee to participate in a partial payment of claim in lieu of assignment only after a determination that partial payment would be less costly to the Federal government than other reasonable alternatives for maintaining the low- and moderate-income character of the project. This determination shall be based upon the findings listed below and such other find-

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ings as the Commissioner deems appropriate:

(1) The mortgagee is entitled, under § 207.255, to assign the mortgage in exchange for the payment of insurance benefits;

(2) The relief resulting from partial payment, when considered with other resources available to the project, would be sufficient to restore the financial viability of the project;

(3) The project is, or can at reasonable cost be made, structurally sound;

(4) The management of the project is satisfactory to the Commissioner; and

(5) The default under the insured mortgage was beyond the control of the mortgagor.

(c) Partial payment of a claim under this section shall be made only when:

(1) The project is, or potentially could serve as, a low- and moderate-income housing resource;

(2) The property covered by the mortgage is free and clear of all liens other than the insured first mortgage and such other liens as the Commissioner may have approved;

(3) The mortgagee has voluntarily agreed to accept partial payment of the insurance claim under the mortgage insurance contract and to recast the remaining mortgage amount under terms and conditions prescribed by the Commissioner; and

(4) The mortgagor has agreed to repay to the Commissioner an amount equal to the partial payment, with the obligation secured by a second mortgage on the project containing terms and conditions prescribed by the Commissioner. The terms of the second mortgage will be determined on a case-by-case basis to assure that the estimated project income will be sufficient to cover estimated operating expenses and debt service on the recast insured mortgage. The Commissioner may provide for postponed amortization of the second mortgage.

(d) Payment of insurance benefits under this section shall be in cash. The Commissioner shall waive the deduction of one percent of the mortgage funds advanced to the mortgagor, provided for in § 207.259(b)(2)(iv), with respect to a partial payment of a claim under this section. The items referred